D.B.Central Excise Appeal NO. 18/2006
(Aditya Cement Vs. Union of India and Ors.)

DATED :22.05.2006.

HON'BLE MR. RAJESH .BALIA, J.
HON'BLE MR.RAJENDRA PRASAD VYAS, J.

Mr. Rajendra Mehta for the appellant.
Mr. V.K. Mathur, for the respondents.

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Learned counsel for the appellant is directed to furnish a copy in advance to the learned standing counsel for Union of India as the issue raised in this appeal appears to be governed by the Supreme Court decision in case of M/s Vikram Cement [2006] 2 SCC 351 and [2006] 197 ELT 145 and number of other appeals decided by this Court following the aforesaid decision of the Supreme Court. The appeal of the appellant relates to its claim to modvet credit in respect of inputs used at mines held by the appellant as captive mines and capital goods used at such mines. The Tribunal has rejected the claim of the appellants by referring the decision of the Hon'ble Supreme Court in CCE Jaipur Vs. J.K. Udhyog Ltd. reported in 2004 [171] ELT 289 (SC).

This position is not in dispute that decision in M/s J.K.Udaipur Udhyog case was against the assessee, but the said decision has since been over-ruled by a

larger Bench of Supreme Court in Vikram Cement's case [Supra]. In Vikram Cement's Case referred to above the Hon'ble Supreme Court has categorically held that the capital goods as well as inputs used at the captive mines whereby the manufacturers are eligible to modvet credit if the raw material excavated are exclusively used in the manufacture of the goods by the holder of the captive mines.

Following the aforesaid decision number of cases have been decided by the Court. This position is also not disputed by the learned counsel for the parties.

In view of the fact that the decision relied upon by the Tribunal which rejecting the claim of the appellant has since been over ruled by the Supreme Court and the case is squarely covered by the ratio of decision in two cases of M/s Vikram Cement Vs. Commissioner of Excise [2006] 2 SCC 351 and (2006) 197 ELT 145 this appeal is allowed. The order of the Tribunal is set aside and we hold the appellant shall be entitled to mod vet credit in terms of the law laid down in Vikram Cement's case referred to above.

[R.P. VYAS], J. [RAJESH BALIA], J.

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